

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
NICHOLAS HOGAN,  
  
Defendant.

NO. CR16-0154JCC

MEMORANDUM ON DEFENDANT'S  
MOTION FOR MODIFICATION OF HIS  
TERMS OF RELEASE.

**I. Introduction**

Defendant, NICHOLAS HOGAN, seeks to modify his conditions of release to allow him to possess a firearm so that he may return to work as an officer with the City of Snoqualmie. Currently, HOGAN is on administrative leave and has been told that he may be terminated since he is unable to work as an officer while his case is pending trial. The government objects to striking the firearms condition and believes that 18 U.S.C. § 922(d) prevents the City of Snoqualmie from providing a firearm to HOGAN.

HOGAN claims that he can seek relief from the legal prohibition of possessing a firearm under 18 U.S.C. § 925(c). HOGAN is correct that Section 925(c) allows him to seek relief from being unable to possess a firearm, however, because Congress has not provided the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) the necessary funds to investigate and process these applications, Section 925(c) is essentially void.

1 Further, HOGAN may not seek relief from the United States District Court until there has  
2 been a denial of his application. Thus, Section 925(c) offers HOGAN no relief.

## 3 II. Discussion

4 18 U.S.C. § 925(c) states in relevant part:

5 A person who is prohibited from possessing, shipping, transporting, or  
6 receiving firearms or ammunition may make application to the Attorney General  
7 for relief from the disabilities imposed by Federal laws with respect to the  
8 acquisition, receipt, transfer, shipment, transportation, or possession of firearms,  
9 and the Attorney General may grant such relief if it is established to his  
10 satisfaction that the circumstances regarding the disability, and the applicant's  
11 record and reputation, are such that the applicant will not be likely to act in a  
12 manner dangerous to public safety and that the granting of the relief would not be  
13 contrary to the public interest. Any person whose application for relief from  
14 disabilities is denied by the Attorney General may file a petition with the United  
15 States district court for the district in which he resides for a judicial review of such  
16 denial. The court may in its discretion admit additional evidence where failure to  
17 do so would result in a miscarriage of justice. . .

18 Under this statute a person may make application to the Attorney General for  
19 relief from their disability. The Attorney General has delegated the authority for  
20 considering such requests to the ATF. See, C.F.R. § 478.144. If the ATF denies the  
21 application, the applicant can then seek review of that decision with the United States  
22 District Court in which he/she resides. The District Court has the authority to set aside  
23 the denial and order relief.

24 Since 1992, Congress has blocked the use of funds to process requests under  
25 Section 925(c). According to ATF counsel, this prohibition against the use of funds to  
26 process the petitions is still in effect.

27 Unless and until the ATF denies an applicant's petition, the United States District  
28 Court is without jurisdiction to review the applicant's petition. *United States v. Bean*,  
537 U.S. 71, 75-76 (2002); *United States v. Oldroyd*, 156 F.3d 1240 (9<sup>th</sup> Cir. 1998),  
unpublished; *Patterson v. United States*, 2015 WL 5712008 (N.D. of Mississippi, United  
States District Court, 2015).

1 Here, even if this Court were to strike the firearms condition, 18 U.S.C. § 922(d)  
2 would still prohibit the City of Snoqualmie from providing HOGAN a firearm. To avoid  
3 violating Section 922(d), the City of Snoqualmie would have to apply for and be granted  
4 relief under Section 925(c). It is highly unlikely that the City of Snoqualmie would file  
5 such a petition. Even if the City did file such a petition, the ATF is not processing these  
6 applications so there is no possibility they would be granted relief.

7 Likewise, Section 922(d) prohibits HOGAN from receiving or acquiring a firearm  
8 since he has been indicted for a felony. In order to seek relief from this prohibition,  
9 HOGAN would have to file a petition with the ATF and show that he would not be likely  
10 to act in a manner dangerous to public safety and that the granting of the relief would not  
11 be contrary to the public interest. As noted this is moot since the ATF is not processing  
12 these petitions.

13 The District Court cannot offer any relief until the ATF denies the City of  
14 Snoqualmie or HOGAN's petition.

### 15 III. Conclusion

16 Consequently, Section 922(d) bars the City of Snoqualmie from providing  
17 HOGAN a firearm. This makes HOGAN's petition to modify his conditions of release  
18 moot.

19 DATED this 5<sup>th</sup> day of July, 2016.

20 Respectfully submitted,

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